IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 249 of 2007
To
FIRST APPEAL No. 256 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER & 1 - Appellant(s)
Versus
MAGANBHAI SHIVDAS ISHVARBHAI - Defendant(s)

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Appearance :
Mr.S.S.Shah,learned Government Pleader for Appellants in First Appeal Nos.249 to 252 of 2007

Mr.J.K.Shah,learned Assistant Government Pleader for Appellants in First Appeal Nos.253 to 256 of 2007

MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

Date : 02/04/2007

COMMON ORAL JUDGMENT

1. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated September 30,2005, rendered by the learned 4th Addl.Senior Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case Nos.217/99 to 224/99, by which the claimants have been awarded additional amount of compensation at the rate of Rs.27/- per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.2.40 Ps. per sq.mt. by his award dated December 22,1998.

2. A proposal was received by the State Government to acquire agricultural and non agricultural lands of village Dangarwa, Taluka Viramgam, District Ahmedabad for the public purpose of construction of a canal under the Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was

issued, which was published in the Official Gazette on March 4,1997. Thereafter, necessary inquiry under Section 5 of the Act was made and a report was submitted to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village Dangarwa specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of a canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette on December 17,1997. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated December 22,1998 offered compensation to the claimants at the rate of Rs.2.40 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications

under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (R) at Navrangpura, where they were numbered as Land Acquisition Case Nos. 217/99 to 224/99.

3. On behalf of the claimants, witness Maganbhai Shivdas Patel was examined at Exh.14. The witness mentioned in his testimony before the Court that his village Dangarwa was fully developed and that the lands acquired were highly fertile. The witness also stated that each claimant was able to raise three crops in a year and that each claimant was able to earn income of Rs.1 lac per year per Vigha, from the sale of agricultural produces like millet, cereals. Cotton, cumin seeds, etc. The witness referred to award made by the Special Land Acquisition Officer relating to temporary acquisition of lands, situated in the sim of village Dangarwa which were acquired for the public purpose of ONGC and claimed that on the basis of that award, each claimant was entitled to compensation at the rate of Rs.75.25 Ps. per sq.mt. Though this witness was examined at length

by the learned counsels for the acquiring authorities, nothing substantial could be elicited.

4. On behalf of the acquiring authorities witness Ghanshyamdas Omprakash Gupta was examined at Exh.18. The witness mentioned in his examination-in-chief that the lands of village Madrisana were better in quality than those situated at village Dangarwa. The witness further stated that the distance between village Nani Rantai and village Dangarwa was about 7 Kms. and produced the consent award made by the Special Land Acquisition Officer relating to the lands of village Nani Rantai at Exh.24 for consideration of the Court. In cross-examination the witness stated that the boundaries of village Dangarwa and village Madrisana were adjoining each other and that the distance between the lands situated in Gamthal of those two villages was about 3 Kms.

5. Yet another witness i.e. Mr. Bhupendrakumar K.Kumar, who was then discharging duties as Special Land Acquisition Officer, was examined by the acquiring authorities at Exh.22. This witness asserted before the Court that the award was made by

the Special Land Acquisition Officer on the basis of materials produced before him and as relevant factors were taken into consideration by him, the claimants were not entitled to enhanced compensation. However, in cross-examination the witness stated that he was not associated with the proceedings initiated for acquiring the lands from village Dangarwa and that he was deposing before the court on the basis of official record made available to him. Further, Jantri of village Dangarwa was produced at Exh.25 whereas xerox copies of sale deeds relating to the lands of village Dangarwa was produced at Exh.26 to 31 for consideration of the Court.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Madrisana was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. Placing reliance on the said award and considering the time gap between the publication of notifications issued under Section 4(1) of the Act for acquiring the lands from the two villages, the Reference Court has awarded additional

amount of compensation at the rate of Rs.27/- per sq.mt. by the impugned award, giving rise to the above numbered appeals.

7. This Court has heard Mr.S.S.Shah, learned Government Pleader and Mr.J.K.Shah, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned counsel for the claimants at length and in great detail. This court has also considered the paper book supplied by the learned counsel for the claimants, which includes the oral as well as documentary evidence adduced by the parties before the Reference Court.

8. It is agreed between the learned counsels for the parties that the xerox copies of sale deeds were not relevant for the purpose of determining market value of the lands acquired in the instant case. It may be mentioned that in First Appeal Nos.105 to 119 of 2007 decided on April 2,2007, this Court has held that the claimants, whose lands were acquired from village Dangarwa pursuant to publication of notification issued under section 4(1) of the Act in the Official Gazette on August 8,1995, were entitled to compensation in all at the rate of Rs.23/- per

sq.mt. This judgment has been brought to the notice of the court by the learned counsels for the parties. The learned counsels for the parties have prayed that the said decision of the High Court relating to the lands of this very village be considered and made basis for determining the market value of the lands acquired in the instant case. In the earlier cases, the previous award of the Reference Court relating to the lands of village Madrisana was relied upon for the purpose of holding that the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt. and the same award i.e. award of the Reference Court relating to the lands of village Madrisana is also relied upon by the claimants in the instant cases. There is also a general consensus between the learned counsels for the parties that the claimants in the instant cases also would be entitled to compensation on the basis of the judgment delivered by the High Court relating to the lands of this very village. It may be mentioned that earlier for acquiring the lands of village Dangarwa, Notification under Section 4(1) of the Act was published in the official gazette on August 8,1995, whereas in the instant cases notification was published in the Official Gazette on March 4,1997. Therefore, the

claimants in the instant cases would be entitled to benefit of reasonable rise in price of the lands at the rate of 10% per annum. If so calculated, the claimants would be entitled to rise in price of the lands at the rate of Rs.3.45 Ps. per sq.mt., which figure is rounded off to Rs.3.50 Ps. for the sake of convenience of calculation. Thus, on the basis of previous award of the Reference Court, which was subject matter of challenge in First Appeal Nos.105 to 119 of 2007, this Court is of the opinion that the claimants in the instant cases would be entitled to compensation at the rate of Rs.26.50 Ps. per sq.mt. for their acquired lands and not at the rate of Rs.29.40 Ps.per sq.mt. as held by the Reference Court. The appeals, therefore, will have to be accepted in part.

9. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated September 30,2005, rendered by the learned 4th Addl.Senior Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case Nos. 217/99 to 224/99 awarding additional amount of compensation to the claimants at the rate of Rs.27/- per sq.mt. for their acquired lands, over and above the compensation

offered to them by the Special Land Acquisition Officer at the rate of Rs.2.40 Ps. per sq.mt. by his award dated December 22,1998, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.26.50 Ps. per sq.mt. for their acquired lands. The other statutory benefits which have been granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs.

The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

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